

EXHIBIT “A”

COPY

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re: INACOM CORP., et al.,

-----x
INACOM CORP., on behalf of all
affiliated Debtors,
Plaintiff,
-against-
TECH DATA CORP.,
Defendant.

Civ Act No.
04-148 GMS
Adversary No.
02-03496 PJW

-----x
INACOM CORP., on behalf of all
affiliated Debtors,
Plaintiff,
-against-
DELL COMPUTER CORPORATION,
Defendant.

Civ Act No.
04-582 GMS
Adversary No.
02-03499 PJW

-----x
INACOM CORP., on behalf of all
affiliated Debtors,
Plaintiff,
-against-
LEXMARK INTERNATIONAL, INC.,
Defendant.

Civ Act No.
04-583 GMS
Adversary No.
02-03500 PJW

-----x
INACOM CORP., on behalf of all
affiliated Debtors,
Plaintiff,
-against-
INGRAM ENTERTAINMENT, INC.,
successor in interest to
NASHVILLE COMPUTER LIQUIDATORS,
Defendant.

Civ Act No.
04-593 GMS
Adversary No.
02-03960 PJW

July 28, 2005

5:19 p.m.

Deposition of RICHARD A. WHALEN

Computer Reporting Incorporated

CRI

501 Fifth Avenue New York, NY 10017
(212) 986-1344 Fax (212) 983-9149 www.crinyc.com

July 28, 2005

5:19 p.m.

Deposition of RICHARD A. WHALEN, held
at the offices of Pachulski Stang Ziehl
Young Jones & Weintraub, 780 Third Avenue,
New York, New York, pursuant to Agreement,
before John Ianno, Jr., a Notary Public of
the State of New York.

A P P E A R A N C E S:

PACHULSKI STANG ZIEHL YOUNG

JONES & WEINTRAUB

Attorneys for Plaintiff

10100 Santa Monica Blvd.

Los Angeles, California 90067-4100

BY: ANDREW W. CAINE, ESQ.,

of Counsel

ADORNO & YOSS, LLP

Attorneys for Tech Data Corp.

350 East Las Olas Boulevard

Ft. Lauderdale, Florida 33301

BY: STEPHEN HUNT, ESQ., (By Telephone)

of Counsel

A P P E A R A N C E S: (Cont'd):

HUGHES LUCE LLP

Attorneys for Dell Computer Corp.

111 Congress Avenue Suite 900

Austin, Texas 78701

BY: H. ROBERT POWELL, ESQ.,

of Counsel

STOLL KEENON & PARK LLP

Attorneys for Lexmark International

400 West Market Street

Louisville, Kentucky 40202-3377

BY: CULVER V. HALLIDAY, ESQ.,

of Counsel

1 **R. Whalen**

2 Blackstone report. Would it be appropriate to
3 consider the information in the Blackstone report?

4 A. You don't need it, you already have
18:08:42 5 it. You mean that particular balance sheet and
6 those balances, current assets, \$10, fixed assets,
7 \$12.

8 Q. There may be additional data
9 underlying the balance sheet that's contained in
18:08:53 10 the Blackstone report that you don't see in the
11 balance?

12 A. I suppose if it is factual data that
13 was around on the valuation date, then I'm
14 thinking no matter where it comes from, you should
18:09:06 15 consider it. There is a difference between
16 creating a report with all the judgment that goes
17 into it, and the thinking cap on in May of 2000,
18 which is different than perhaps a thinking cap in
19 April, or March, or February. The difference
18:09:26 20 between assertions made in a report and financial
21 statement data on a page. Maybe that's where we
22 are diverging here.

23 Q. We are not, I'm just trying to
24 understand your opinion.

18:09:42 25 A. I think in general wherever you can

1 **R. Whalen**

2 get information that was reasonable knowledge by a
3 willing buyer as of the valuation date, and you
4 should endeavor to get as much information as they
18:09:53 5 can, but things that are put out there, published,
6 become public or become available after the
7 valuation date, you can't use, you can't consider
8 them, unless you pick a new valuation date.

9 Q. Let's say hypothetically you have a
18:10:25 10 valuation date of June 30?

11 A. Okay.

12 Q. And the most recent projection you
13 have in order to perform your analysis, have been
14 completed on January 1st, and those projections
18:10:40 15 relied on actual data prior to January 1st?

16 A. And the thinking on January 1st.

17 Q. Right.

18 **MR. POWELL:** Which January 1st?

19 **MR. CAINE:** Of the same year.

18:10:52 20 **THE WITNESS:** Before.

21 Q. You would use those January 1st
22 projections in preparing your valuation as of June
23 30?

24 A. Yes, or what I would try and do is
18:11:03 25 update those projections, make sure they are

1 **R. Whalen**

2 data, or it is inappropriate to use post valuation
3 date data?

4 A. It is inappropriate to use post
18:21:42 5 valuation date data. I may have been unclear
6 because I didn't want it to sound like that was
7 just my opinion, I think that's valuation rules.

8 **MR. POWELL:** We reserve further
9 questions.

18:21:55 10 **FURTHER EXAMINATION**

11 **BY MR. CAINE:**

12 Q. The valuation rules to which you
13 refer, where are they from?

14 A. They are in most textbooks, Shannon
18:22:17 15 Pratt, third edition, if one does a Google search,
16 they can find it in many different places.
17 Shannon Pratt has a book called Valuing a
18 Business, it is one of the things you give the new
19 hires and say here, read this, kind of a
18:22:40 20 dictionary of business valuation, and there is a
21 section in there which stresses the importance of
22 using valuation data right at the valuation date.

23 I'm not sure which edition of Pratt
24 says don't go past your -- you know, it is one
18:22:58 25 thing to say don't use valuation data far afield

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July 28, 2005

9:11 a.m.

Deposition of JASON FENSTERSTOCK

Computer Reporting Incorporated

CRI

501 Fifth Avenue New York, NY 10017
(212) 986-1344 Fax (212) 983-9149 www.crinyc.com

July 28, 2005

9:11 a.m.

Deposition of JASON FENSTERSTOCK,
held at the offices of Pachulski Stang Ziehl
Young Jones & Weintraub, 780 Third Avenue,
New York, New York, pursuant to Agreement,
before John Ianno, Jr., a Notary Public of
the State of New York.

A P P E A R A N C E S:

PACHULSKI STANG ZIEHL YOUNG

JONES & WEINTRAUB

Attorneys for Plaintiff

10100 Santa Monica Blvd.

Los Angeles, California 90067-4100

BY: ANDREW W. CAINE, ESQ.,

of Counsel

ADORNO & YOSS, LLP

Attorneys for Tech Data Corp.

350 East Las Olas Boulevard

Ft. Lauderdale, Florida 33301

BY: STEPHEN HUNT, ESQ., (By Telephone)

of Counsel

A P P E A R A N C E S: (Cont'd):

HUGHES LUCE LLP

Attorneys for Dell Computer Corp.

111 Congress Avenue Suite 900

Austin, Texas 78701

BY: H. ROBERT POWELL, ESQ.,

SABRINA L. STRUESAND, ESQ.,

of Counsel

STOLL KEENON & PARK LLP

Attorneys for Lexmark International

400 West Market Street

Louisville, Kentucky 40202-3377

BY: CULVER V. HALLIDAY, ESQ.,

of Counsel

A P P E A R A N C E S: (Cont'd):

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Attorneys for Ingram Entertainment

650 Town Center Drive 4th Floor

Costa Mesa, California 92626-1993

BY: JONATHAN P. HERSEY, ESQ.,

of Counsel

BLANK ROME LLP

Attorneys for Executive Sounding Board

One Logan Square

Philadelphia, Pennsylvania 19103-6998

BY: EARL M. FORTE, ESQ.,

of Counsel

ALSO PRESENT:

DEAN VOMERO

RICHARD A. WHALEN

1 **J. Fensterstock**

2 See that?

3 A. Yes.

4 Q. What circumstances were you referring

10:07:42 5 to?

6 A. All of the company circumstances, as
7 of April 17.

8 Q. Why was April 17 chosen?

9 A. That was the date that counsel asked
10:07:58 10 us to make our assessment as of.

11 Q. Why was not April 22nd chosen?

12 A. I believe April 17 was the date after
13 which all of the clients that have retained us, by
14 that date all of the payments that are subject to
10:08:33 15 attack in this action had been received, and there
16 was no need to go beyond that date.

17 Q. In the course of preparing your
18 report, did you use any information of which
19 Inacom became aware after April 17th?

10:09:01 20 A. Could you just please repeat that
21 question.

22 Q. Sure. In the course of preparing your
23 report, Exhibit 1, did you use any information of
24 which Inacom became aware after April 17th?

10:09:29 25 A. In the course -- no.